



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0807; FRL-9680-02-R8]

Air Plan Approval; South Dakota; Revisions to South Dakota Codified Law and Administrative Rules of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA or the “Agency”) is promulgating approval of South Dakota’s submittal requesting that EPA recognize the merger of South Dakota’s Department of Agriculture (DOA) with the Department of Environment and Natural Resources (DENR) to form the new Department of Agriculture and Natural Resources (DANR) and incorporate corresponding non-substantive revisions to the South Dakota Codified Law (SDCL) and the Administrative Rules of South Dakota (ARSD) into South Dakota’s Implementation Plan. Accordingly, EPA is taking this final action in accordance with Clean Air Act (CAA).

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives adverse written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0807. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov*. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-6175, email address: gregory.kate@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means EPA.

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this issue of the *Federal Register* publication, EPA is publishing a separate document that will serve as the proposal to approve revisions to both the SDCL and the ARSD. If EPA receives adverse comments, EPA will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Background

On April 16, 2021, South Dakota’s Office of Attorney General submitted a letter notifying EPA of the establishment of the South Dakota DANR. The letter stated that on January 19, 2021, South Dakota Governor, Kristi Noem, executed Executive Order 2021-03, which provided for the merger of the South Dakota DOA and the South Dakota DENR into one

department—the DANR. According to the South Dakota Constitution, executive reorganization orders become effective “within ninety days after submission” of the executive order to the South Dakota Legislature (Legislature) unless one of the two houses of the Legislature disapproves of the executive reorganization (S.D. Constitution, Article IV, Section 8).¹ During the 2021 session, neither house of the Legislature passed a resolution of disapproval of Governor Noem’s Executive Order 2021-03 and the Order became effective April 19, 2021.²

In the letter submitted by the South Dakota Office of Attorney General, Assistant Attorney General Steven R. Blair stated that all State programs previously authorized to carry out EPA programs would continue to function in the same manner and all current environmental protection activities conducted under existing EPA approved or delegated programs under the DOA and/or the DENR would continue intact under the newly established DANR. Further, Mr. Blair stated that the merger caused no substantive budgetary or personnel changes, that the new DANR has all the authorities, powers, and duties of the previous DOA and DENR, and that the laws in effect at the time EPA approved or delegated authority to DOA and/or DENR continue to be fully effective and enforceable. Mr. Blair explained that the merger did not require any substantive changes to state law or administrative rules; the statutes and rules were merely updated to reflect the name of the new department.³

III. State Submittal

On January 21, 2022, pursuant to 40 CFR part 51, South Dakota submitted a request that EPA recognize the merger of South Dakota’s DOA with the DENR to form the new DANR and incorporate corresponding revisions to the SDCL and the ARSD into South Dakota’s Implementation Plan at 40 CFR 52.2170. The January 21, 2022 submission included a letter

¹ SD DANR Merger SIP Submittal, January 21, 2022, p. 27-28, Letter from Steven R. Blair, Assistant Attorney General, South Dakota Office of Attorney General, to Deb Thomas, Acting Regional Administrator, EPA Region 8, Re: Establishment of South Dakota Department of Agriculture and Natural Resources, April 16, 2021.

² SD DANR Merger SIP Submittal, p.1, Letter from Hunter Roberts, Secretary, South Dakota Department of Agriculture and Natural Resources, to KC Becker, Regional Administrator, EPA Region 8, January 20, 2022.

³ SD DANR Merger SIP Submittal, p. 27-28.

from the Secretary of the DANR, Hunter Roberts, as the Governor’s designee.⁴ Secretary Roberts stated that the SDCL and ARSD were automatically updated with DANR’s new name during the merger process. Additionally, Secretary Roberts stated that South Dakota’s Board of Minerals and Environment approved the DANR’s request to ask EPA to recognize the department’s new name in South Dakota’s State Implementation Plan (SIP) at 40 CFR 52.2170 during a public hearing on December 16, 2021. Secretary Roberts further confirmed that the merger did not cause a substantive change to state law or administrative rules and that DANR maintains the same authorities, powers, and duties covered and implemented under the previous department name.⁵

South Dakota’s submittal included clean and redlined copies of the revised SDCL and ARSD, which are available in the docket for this action. The non-substantive revisions became effective on April 19, 2021.⁶ The submittal also included evidence that public notice of the State’s proposed submittal ran in eleven South Dakota newspapers and a public hearing was held on December 16, 2021, demonstrating compliance with 40 CFR 51.102. The State received no public comments.

The SDCL and ARSD approved into South Dakota’s SIP as revised are listed in Table 1 below.⁷

Table 1—Revisions to South Dakota South Dakota Codified Law (SDCL) and Administrative Rules of South Dakota (ARSD) Air Pollution Control Rules

SDCL:
34A-1-2
34A-1-58.1

⁴ SD DANR Merger SIP Submittal, p. 9.

⁵ SD DANR Merger SIP Submittal, p.1.

⁶ SD DANR Merger SIP Submittal, p. 2-7.

⁷ See SD DANR Merger SIP Submittal, p. 33. In addition to the listed provisions in Table 1, South Dakota also included ARSD 74:37:01:08 in the submittal. This provision is not included as part of the EPA-approved SIP. Accordingly, we are not taking action to include the revised 74:37:01:08 in South Dakota’s approved SIP. See Email dated March 4, 2022, from Kyrik Rombough, Engineer Manager III, South Dakota Department of Agriculture and Natural Resources, to Monica Morales, Acting Deputy Director, EPA Region 8 Air and Radiation Division.

34A-1-60
34A-1-63
ARSD:
74:36:01:01(19)
74:36:01:01(55)

IV. Final Action

South Dakota submitted the necessary information for EPA to review the non-substantive revisions to South Dakota's statutes and administrative rules to reflect the merger of South Dakota's DOA with the DENR to form the new DANR. With the exception of 74:37:01:08, which is part of South Dakota's approved CAA title V program rather than part of South Dakota's approved SIP, EPA is now acting to approve the non-substantive revisions to the SDCL and ARSD air pollution control rules into the SIP at 40 CFR 52.2170.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with the requirements of 1 CFR 5.15, EPA is finalizing the incorporation by reference of the regulations described in section III of this preamble and as set forth in the amendments to 40 CFR 52.2170 below. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which

a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 2, 2022.

KC Becker,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

2. In § 52.2170:

- a. The table in paragraph (c) is amended by revising the entry “74:36:01:01”.

- b. The table in paragraph (e) is amended by adding the entry “XXVII. South Dakota Codified Laws, 34A-1-2, 34A-1-58.1, 34A-1-60 and 34A-1-63” in numerical order.

The revision and addition read as follows:

§ 52.2170 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
Statewide					
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74:36:01. Definitions					
74:36:01:01	Definitions	04/19/2021	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	
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(e) * * *

Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
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XXVII. South Dakota Codified Laws, 34A-1-2, 34A-1-58.1, 34A-1-60 and 34A-1-63	4/19/21	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	

